

**ZONING BOARD OF APPEALS
AMESBURY CITY HALL AUDITORIUM
62 FRIEND STREET, THURSDAY AUGUST 28, 2014
MEETING COMMENCED AT 7:00 P.M.**

PRESENT: Matt Sherrill, Bill Lavoie, Matt Vincent, Bob Orem, Sharon McDermot, David Haraske.

ABSENT: Donna Collins.

ALSO PRESENT: Denis Nadeau. Paul Bibaud transcribed minutes.

MINUTES: JULY 24, 2014: Motion by Bob Orem to accept minutes. Motion was seconded by Sharon McDermot. All in favor.

HOUSEHOLD ENTERPRISES, LLC

Seeking a variance under Amesbury Zoning Bylaws, Section VI-B to re-establish a previously existing residential lot having an area of 20,000 square feet where 40,000 square feet is required in the Industrial District at 42 South Hunt Road, Amesbury in an Industrial Zoning District, Precinct 1.

Sitting on this case will be Bob Orem, Bill Lavoie, Matt Sherrill, Sharon McDermot and David Haraske.

David Jordan, engineer and land surveyor with MHF design Consultants in Salem, NH.

I'm here on behalf of the property owner, Household Enterprises, LLC. Also here with me is Justin Waite and Kenny Guyer of Household Enterprises, LLC, the property owners. History: this property is a 20,000 square foot parcel at 42 South Hunt Road. This property was bought by Household from Waste Management in Dec. of 2013. They are investors who purchased this property after having done significant due diligence, in terms of trying to vet out any issues associated with this property before they even purchased it. The property was listed and sold as a legal, pre-existing, non-conforming residential use in an industrial zone. So they did know that going into this. Once they purchased the property last December, they then embarked on a series of improvements and renovations on the property, during which time they obtained all necessary permits, approvals, and inspections from the city of Amesbury, right up until the time in April of 2014 when they were seeking their occupancy permit. At that time, they had a buyer in line for this property. Work had been completed, followed by getting an occupancy permit just to finalize everything and proceed with the sale. At that time, it was presented to the owner that there was an unknown issue prior that prevented this from an occupancy permit being issued. What was presented to the owners was the fact that, back in 2002 and 2004, the land owner, Waste Management, had submitted a FORM A plan to the Amesbury Planning Board. Essentially, what Waste Management was doing was showing a plan of all the land that they owned on South Hunt Road, and they were trying to subdivide it into two separate parcels. At that time, when they compiled that plan of land, which consisted of several parcels all put together, the house in question, which is in this corner of the plan, showing the house and location of the land in question, that parcel which had existed on South Hunt Road since 1955, that lot was not shown as a separate lot on this plan. Nowhere on this PLB- endorsed plan does it show that it was the intention to consolidate that separate parcel with the rest of Waste Management land. It appears that it was more of a scrivener's error, in terms of those lots lines were not drawn. The lot was owned by Waste Management, but there was a separate house on it ever since 1955 and we don't

believe it was ever intended that that piece of land be absorbed into the larger parcel, 172 acres, that Waste Management owns. WM sold this parcel to Household Enterprises back in Dec. 2013. There was nothing devious or underhanded on WM part in selling that parcel, in part because despite the fact that the FORM A Plan having been endorsed by the PLB in 2004, in the ten years since, that 20K square foot lot in question has continued to exist as a separate tax parcel on the city of Amesbury tax maps. So to this day, this land is shown as a separate parcel, and WM gets a separate tax bill for this lot, in addition to the tax bills it gets for the larger lots. So WM had no idea that the city of Amesbury viewed this lot as not existing anymore. They had no basis to believe the lot didn't exist, especially since they got a tax bill for it every year.

Matt Sherrill: Just for clarification, you said that the WM, the owner of the lot in question, have been receiving separate tax bills from the city of Amesbury all along?

David Jordan: That is correct. So, going back to April of 2014, when the issue of the parcel, having deemed to not exist anymore, guidance from the building department said to the owners (Household) that if you come in with a FORM A Plan, re-establish the previous non-conforming lot, in terms of the fact that it didn't conform to zoning ... excuse me, I missed a couple steps. Originally, they (Household) were told to come back with a plan that shows a conforming lot. Mistakenly, however, they were directed to come in with a 20K square foot lot, under the belief that that conformed to Zoning. It turns out that wasn't true. Our office did prepare a plan that created a 20K square foot lot, which was about 150 square feet larger than the 1955 lot. So we adjusted the lot lines to get it up to 20K square feet, submitted a FORM A Plan, and at that point, upon review, the city said "wait a minute, this is actually in the industrial zone, not the commercial zone. You really need 40K square feet." That created a problem for us because the 40K square feet, essentially doubling the lot size...the problem is the rest of the Waste Management land, on the west side of the lot you have an access road that goes back into the Waste Management land, so we can't expand there. Once you get into the back, you have access roads, you have utility poles that run through there, but even beyond that, there are environmental permits associated with this 172 acres that preclude us from making this lot completely conforming in terms of a 40K square foot lot. We meet the frontage requirement of 125 feet. We've adjusted that so we do conform with the frontage for a lot in the industrial zone. We are, however, shy on the lot area. It is 20 K square feet, it is slightly more conforming than it had been since 1955, but it does not fully conform to the obvious 40K square feet required in industrial district requirements. So that is essentially how we got to this point this evening.

Matt Sherrill: At this point, what would be best is to speak to the variance issues: what's the hardship, that kind of thing, just so we have a basis for our decision.

David Jordan: Certainly. The obvious hardship for us is the financial investment that Household Enterprises has undertaken. The initial investment of buying the property, with the understanding and honest belief that this was a legally existing, non- conforming lot, and beyond that, they made significant additional financial investments in this property, bringing the house up to current codes, obtaining all permits and proper inspections through the city, in the goal of getting this to a salable house. Since all this has happened in April, they have actually lost not one but two potential sales due to the delay in trying to get the proper permits in place at this point. Truly, there has been a significant financial hardship or will be a financial hardship to Household Enterprises, if this variance is not granted.

Matt Vincent: Question: when Waste Management marketed the land back in 2013, was it presented as a non-conforming lot?

David Jordan: Yes. We have the MLS listing sheet that lists it as an approved, non-conforming building lot.

Matt Vincent: But the buyers were unaware based on the presentation of a non-conforming lot based on what it used to be?

David Jordan: Correct.

Bob Orem: It is correct that in the application states that the residential structure was recently renovated for the benefit of all permits properly issued by the Amesbury inspections department, correct?

David Jordan: that is correct.

Matt Sherrill: Any questions / comments from anyone in the audience?

David Hrencecin, I am here tonight representing my son, Chad Hrencecin: Chad bought the home in 2007. We did a lot of research looking at it. I went back looking at deeds to 1914. I do have some questions on the surveying of the property. I happened to be at the home on 40 South Hunt Road and the surveyors came out, and they were asking me all kinds of questions about markers, where are they, and what not. I knew there were markers in the back line of the property, or at least the last time I looked in Dec. of 2013.

When I went back there recently, the markers are all gone. That makes me call into question perhaps the accuracy. Going back in history, this property was divided by the Morriall family. There were a number of Morriall family members that divided the property in various areas. This one in particular that encompasses both 40 and 42 South Hunt Road was by two brothers in the 1950s. The deeds from 1946 indicated that the property was really 1.37 acres. One brother sold it and deeded it to his brother in 1953. They divided the property evenly, in terms of total area. I was surprised in looking today to see that was 19,000. I had always calculated that basically a 124 by 170 property. Frontage of 124 and 170 in the back. The property at 42 South Hunt Road is frontage of 124 and about 108 in the back end southerly side. I looked at it, then I saw the plans in terms that were drawn up, and it indicated that there was a 20 foot length between their proposed property line and the house at 42. In reality, the distance between the corners of those homes is 36 feet. So when they divided it up, I'm sure they meant to be 18 / 18, meaning the brothers must have meant it that way. The next door neighbor, Bobby Kilbus, had been around at that time, he was the one who told me, as well, saying that the home in question at 42...someone had asked about Waste Management, well Waste Management had used that as an office for the years since 1985, when the property was bought by Waste Management. The office manager also showed me the line, and that line does not match the drawing. So what my son and I have decided to do is hire another surveyor and we'll do an independent review of our lot and their lot. I'm not disputing it, I'm just saying I can't verify the validity of the current drawing, and I want to correct this before going into the future. I don't want this to linger for 20 years or so. Another thing I'm concerned about is, if you require this house to have a 20K square foot lot, that puts my son in the position where he won't be able to sell his house, because he'll have to go through the same thing. It'll be landlocked. You are dealing with history here. I think whatever the deed says it is should be accepted, and not try to artificially increase the property size in order to satisfy a rule. That's my opinion, because if you have to do it, you better tell everyone else in the area with less than 20K square feet, you are not going to be able to sell it. That is a hardship. My son and I lost \$50K on the value of our property to date. Over these past 7-8 years, he put in almost \$39K into real estate taxes. That's why he works 6 days a week. I love the house in question, I say approve it as it is, I'm getting tired of cutting their grass and pruning their bushes.

Matt Sherrill: Denis, do you have anything to say? I think there may be some misconceptions. There must be some misunderstanding on your part as to what is going on here tonight.

Denis Nadeau, building commission and zoning compliance officer: You all have the plan that was listed and done for this dated July 30, 2014. If you look at Map 95 lot 4, I believe what Dave is talking about is, if you see the existing house, this plan appears to have been made out of a plan showing the existing house, and it shows the building setback line, all the way around the lot. If you look at how the house is designed, if you face it in the right hand corner, it shows 20 feet, and the house just barely missing it. When you go to the top, that line disappears. What's happening is, I believe that the house line and the building setback line is just getting eaten up by how thick is a line. He's showing 20 feet to his setback line. But if you took that dimension and tried to take two feet out of it, how thick is the line, an eighth of an inch, and I don't know, the scale is one inch in thirty. Those two lines would almost automatically intersect, because how thick is a line? Should it have been done this way? Probably not. I don't know. They probably should've showed it. But I believe all he did was take the existing house, move the lot lines and show you the setback lines. I believe the front of that house, if it was done and surveyed, or if you did what was known as a plot plan or an as built plan, it would show that that foundation is probably 18 feet from that lot line. That is just my conclusion on this, because the line disappears and they go together. All we have to go by is an engineer's stamp on here that says this is where this is. The only way you can get the facts is to get an independent surveyor to come up with the true lines. Then it becomes, in my opinion, a civil case. We have an engineers plan here stamped. I don't think the intent was to take any of his land. We have a lot line that was stamped and was approved by the PLB, this lot line was approved before and supposedly never changed. My guess is that this is a legal document, we go by this document that was given to us. If they want to dispute this lot line, they have to get it surveyed and have the two land surveyors dispute it. Whether he's right or wrong, I can't tell you.

David Hrencecin: Also, the question wasn't answered: what would happen if we decided to sell the property today?

Matt Sherrill: Nothing, because you are grandfathered in, they are not.

Denis Nadeau: Your lot is what is known as a pre-existing, non-conforming lot or structure. Under zoning and Mass. General Law, Chapter 40 A Section 6, you have the right that is pre-existing, non conforming. That can stay that way forever. You can sell that lot as long as you don't change that lot line, you never lose anything. I'd like to say that I've been going through this from the beginning. There were some errors made, and as I stated before, this whole thing is nothing but a fiasco of errors, starting from Waste Management and went right down the line, myself included...not intentionally, but errors were made.

David Jordan: In response: obviously, we're very sensitive to any concerns of the neighbor re: the validity of the lot line. We believe we have the lot line shown correctly. We'll be glad to work with whatever surveyor they hire for a formal review of this. I'll give him my card so they can contact us directly. I welcome all communication on this. We're just looking to resolve any zoning issues, not to create issues for abutters.

Matt Sherrill: Since no one else wishes to speak, then I will entertain a motion to close and discuss.

Motion was made by Sharon McDermot to close and discuss. Motion was seconded by David Haraske.

Matt Sherrill: So this has been a comedy of errors all along the line. This is a request for a variance for lot size / area. So we need to speak about the substantial hardship for this variance.

We heard that a large financial investment has been made in fixing up this property, getting all the permits and inspections, until when it came time to sell it, which is when it was discovered that this lot line error exists. We don't usually entertain financial as a hardship. Rarely can you pinpoint it to be a financial issue. But I think here, there is a valid issue here financially, but I'll hear from the board for their opinions.

Bob Orem: There is also an issue regarding the shape of the lot, in terms of the apparent inability of the owners to expand the lot to comply with the 40K square foot requirement.

Mr. Jordan explained that there is a roadway running on the west side of the property that forks behind #42, so it would be difficult if not impossible to expand the lot to comply with the 40K square foot. I think the shape of the lot and the topography, etc. is a valid criteria.

Matt Sherrill: I agree, so we could tie it to financial investment, but also the shape of the lot due to roadway access on the westerly side. How is it due to the soil shape topography of the land, structures, access road and the shape? All these.

Do these above features generally affect the district? No.

What would be the substantial detriment to the public good if this variance was granted? None.

Does this petition derogate from the intent of the bylaw? None seen.

Is there any more discussion? None.

Motion to close and vote on this application was made by Sharon McDermot. Motion was seconded by Bill Lavoie.

Matt Sherrill: On this application, they are requesting for this re-establishment of a lot line, and the lot is now 20K square feet, and it needs to be 40K, so they are here in front of us for this variance for lot size. Having gone through all of the questions, lets vote:

Bill Lavoie: Yes.

Bob Orem: Yes.

Matt Sherrill: Yes.

Sharon McDermot: Yes.

David Haraske: Yes.

Your request has been **approved.**

MEADOWBROOK VENTURES – Request for Extension of Comprehensive Permit on a 40 B Project.

Attorney Ted Regnante is here representing Meadowbrook Estates Ventures LLC, who is the holder of the comprehensive permit for Meadowbrook. The applicant is requesting is an extension of the comprehensive permit for a period of two years. There is a present extension that was granted in 2012 by the ZBA. That expires on Sept. 16, 2014. What happened is, the original developer, Wayne Vynorius, passed away in 2010. This was a family effort, and there was no one in the family that had the capability of fulfilling his dream of building these housing units. So they put the property on the market, and it has sat there on the market since the time that you granted the last extension. During that time, number 1: the market has not been good, but is coming back now. 2. This was a substantial project. This was a total of 268 units being developed under a condominium regime. Frankly, banks were not and even now are extremely resistant to finance that large of a project. There is more of an appetite today, at least it is improving with the banks. They have been trying to find a buyer. There is a gentleman who has entered into a Purchase and Sale agreement by the name of Turner Porter. He has entered into it subject to getting the extension of the comp permit. What he has been doing in the meantime is meeting with the city officials...a meeting with the mayor, with economic development office,

and a meeting with Nipun Jain, the city planner. They have been trying to look at all the problems between the board and this project. It wasn't the most popular proposal that has been brought before the board. It went through a long history of litigation that Barbara and John were involved in. To be honest, in the long run, the project, irrespective of the fact that we have the permit, presents the problems that I mentioned, and a lot of other problems. So what this gentleman is trying to do is come up with a modified project, substantially less dense, and actually looking at different kinds of proposals that 1. might be easier to market, and 2. easier to finance. I can't tell you what he's decided upon, but what he's been talking to the city about is perhaps single family homes or maybe duplexes...one of those. So it would be different from the attached housing that was the proposal previously. So if that were being done, he would have to come before the ZBA for a modification of the permit, and we'd basically be beginning the project from scratch, as a modification. Frankly, I think that is best for the present owner, and it is clearly best for this potential buyer. One thing that he has been talking about with the city about is, a lot has changed since we last appeared before this board. A lot of things that we do now is mitigation. We voluntarily come in and talk about mitigation for a project. There are a couple things that were talked about here, and that is the need for a sewer pump station, as well as a need for some improvements in the water system. Apparently, the water is not good. Those are two things he is addressing, trying to determine what the financial impact of that will be as well as looking at what the market might be out there. But he doesn't want to spend a lot of time or money unless he knows that he still has the ability to come before you for a modification. If the permit expires, he would have to start all over again, which would be much more difficult than a modification. So that is where we are. I'm asking you to make the determination, first of all, that it is not a substantial change, which clearly under the regulations it is not, therefore not requiring a public hearing; then to grant a 2 year extension. We're hoping to work together on this.

Matt Sherrill: You guys were the first test case for 40Bs. The size of the project was a problem, and the solar-aquatic sewer system was a problem for us, and also not a clear title to some of the property used as an access road going off into the Birchmeadow area was an issue for us. With all that said, we have granted extensions to every 40B project that has been in front of us, with no exception to you, as well. Here's what we've done recently though, because we do understand that the market is starting to change a little bit. Some of these projects may have a chance, some may not. What we did with Amesbury Heights was, we granted them a one year extension, come back in front of us in a year, with some sort of plan, and we'd give you another year extension. Do you think it will take your perspective buyer a year or two years before they are ready to step back in front of us?

Ted Regnante: I think that the buyer can make that determination within the one year, as far as what he is going to need and what kind of project it would be. So I would not have a problem with that, as long as we have the flexibility of if he comes in and we don't have everything in place, and he's making a diligent effort, that we could get another one year extension.

Matt Sherrill: That is what we did at Amesbury Heights. It is more or less the board's way of saying "we want to work with you, but most times, two years ends up being two years, unless there is some sort of pressure put on the developer that we wouldn't expect him to come before us in a year with a full plan ready to go, modifications, etc. No, come before us in a year and say, 'these are my plans, this is what I'd like to do,' and then we'll give him another year to work on getting that plan put down on paper, and if another year extension is needed, we've given three extensions out before.

Ted Regnante: Eminently fair.

Matt Sherrill: So if we vote tonight to allow you a one year extension, come back in one year with some sort of a plan moving forward, with the intent of the board that, as long as we see movement, the board will allow another year extension.

Ted Regnante: Does this board allow a developer to come in and just chat with the ZBA without a formal hearing? We've been doing that with the PLB re: Hatter's Point, and they like to see that. I know most boards are reluctant to do that.

Matt Sherrill: We normally don't do that, but here is what I will do. I will attend one of those informational sessions such as the ones you've been having with the city planner, where I can sit in and listen. I would do that without a problem. Any questions from the board? Personally, I would love to see this project move forward in some way, shape or form. I think the land is suitable for development, just in a scaled down fashion. No more solar-aquatic sewer systems, upstream from our drinking water, please. So what I propose as chairman is that we consider giving the applicant a one year extension, with the ability to come back in front of us in one year to prove that they are moving forward with a plan for development, then with reasonable expectations to get another year extension at that time, provided that we see reasonable expectations moving forward with development.

So the extension would be to Sept. 16, 2015, and then they could come before us in Aug. of 2015 with an update to the plan and proof of progress and intent, and if amenable at the time, we'd grant the second year extension to Sept. 16, 2016.

Motion of "so moved" was made by Matt Vincent. Sharon McDermot seconded the motion. Vote was unanimous.

Barbara (no name given): Attorney Regnante had asked the board to treat it as an insubstantial change not requiring a public hearing. So I believe the board should make that finding as well, that it constitutes an insubstantial change and grant the permit.

Matt Sherrill: What we will do is go on record that the board does feel that this is an insubstantial change, therefore not requiring a public hearing. We have never required a public hearing on any prior request for an extension on a 40 B project. This is no different, as long as the board agrees that it is an insubstantial change, and that'll be part of our motion tonight.

Motion of "so moved" by Matt Vincent and seconded by Sharon McDermot.

Voting went as follows:

Bill Lavoie: Yes.

Matt Vincent: Yes.

Bob Orem: Yes.

Matt Sherrill: Yes.

Sharon McDermot: Yes.

David Haraske: Yes.

You have your one year extension. Come before us again next August with an update to the project, provided we see some movement and life to the project, we'll give you another year.

Motion was made to adjourn the meeting by Sharon McDermot, seconded by Bob Orem. Vote was all in favor.

Meeting was adjourned at 7:50 P.M.

